

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ARISE FOR SOCIAL JUSTICE; )  
OISTE?; NEW ENGLAND STATE-AREA )  
CONFERENCE OF THE NAACP; )  
REV. TALBERT W. SWAN, II; )  
NORMAN W. OLIVER; DARLENE )  
ANDERSON; GUMERSINDO GOMEZ; )  
FRANK BUNTIN; RAFAEL RODRIQUEZ; )  
and DIANA NURSE ) Civil Action No. 05-30080-  
MAP )  
Plaintiffs, )  
)  
v. )  
)  
)  
CITY OF SPRINGFIELD and SPRINGFIELD )  
ELECTION COMMISSION )  
)  
Defendants. )  
\_\_\_\_\_  
)

**DEFENDANTS' PRETRIAL DISCLOSURES REQUIRED BY  
FED. R. CIV. P. 26(a)(3) and LOCAL RULE 16.5(c)**

Defendants hereby make the following pretrial disclosures as required by Local Rule 16.5(c) and Fed. R. Civ. P. 26(a)(3).

**I. Identification of Potential Witnesses Pursuant to Fed. R. Civ. P. 26(a)(3)(A)**

Defendants identify the following names of individual who may or who we expect to be called as witnesses. As permitted in Fed. R. Civ. P. 26(a)(3)(A), Defendants have furnished addresses and telephone numbers for only those persons whose addresses have not been previously provided in the City's various Fed. R. Civ. P. 26(a)(1) Disclosures and Supplemental Disclosures. In the event that Defendants discover that an address or telephone number provided in this pretrial disclosure or in previous Fed. R. Civ. P. 26(a)(1) disclosures or supplemental disclosures is inaccurate or has been changed (or has become available), this information will be immediately forwarded to Plaintiffs. The following list of potential witnesses does not include witnesses who may be called for rebuttal purposes. In addition, although not identified, Defendants may call any witness disclosed by Plaintiffs. Defendants do not waive the right to object to the introduction of testimony on relevancy grounds or lack of expert qualifications from any of the witnesses

identified by Plaintiffs, even where individual is identified as among those witnesses Defendants may call. Defendants reserve the right to supplement, amend, or clarify this list as additional witnesses become available or known to Defendants; as personnel or staff changes within the various departments of City Government; as outside consultants are retained by the City; as city, state, or federal programs or initiatives are undertaken; or as new committees, commissions, and boards are constituted.

A. Defendants expect to call the following witnesses

- \_ ) Dr. Stephan Thernstrom
- \_ ) Bud L. Williams, Springfield City Council
- \_ ) Mayor Charles V. Ryan
- \_ ) Andrea Stone, Springfield Law Department
- \_ ) Gladys Oyolo, Spanish Language Election Program Coordinator
- \_ ) Helen Caulton-Harris, Director of Health and Human Services
- \_ ) Kathleen Lingenberg, Director of Community Development and Housing and Neighborhood Services
- \_ ) Edward A. Flynn, Police Commissioner
- \_ ) Daniel Marrier, GIS Systems Analyst, MassGIS
- \_ ) One or more of the individuals identified as Springfield Public School officials, including the Superintendent, Assistant Superintendents, School Improvement Officers

B. Defendants may call the following previously identified witnesses:

- \_ ) Past and/or present members of the Springfield City Council
- \_ ) Past and/or present members of the Springfield School Committee
- \_ ) Candidates for City Council or School Committee
- \_ ) Staffmembers of the Mayor's Office
- \_ ) Past or present members of the Financial Control Board
- \_ ) Office of the Election Commission staff

- \_ ) Wayman Lee, City Clerk
- \_ ) Members of the Election Commission
- \_ ) Ward Presidents (Republicans and Democrats)
- \_ ) Elected officials of the various neighborhood associations or councils
- \_ ) Juan Gerena, Director of Community Development
- \_ ) Danny Hall, E.E.O. Director
- \_ ) Jose Claudio, Chairman of the Spanish Language Advisory Committee
- \_ ) Dean Jack McDevitt
- \_ ) Roberta Schafer
- \_ ) Poll workers for the 2006 election, as identified on list of poll officials assigned to polling places for the 2006 general election, provided in November 17, 2008, Rule 26(a)(1)(B)
- \_ ) Police officers for the 2006 election, as identified on list of poll officials assigned to polling places for the 2006 general election, provided in November 17, 2008, Rule 26(a)(1)(B)
- \_ ) Joseph Napolitan
- \_ ) Teresa E. Regina
- \_ ) Lisa Reyes
- \_ ) Doctors, nurses, social workers, department heads, and other members of the staff of the Department of Health and Human Services (as identified on document produced on November 17, 2008)
- \_ ) John "Bert" Russ
- \_ ) Jaime Dominquez  
82 Leyfred Ter.  
Springfield, Massachusetts  
413-781-8060
- \_ ) Herminia Hernandez  
9 Cleveland Street  
Springfield, Massachusetts  
413-734-0943

- \_>) Ramon Hernandez  
9 Cleveland Street  
Springfield, Massachusetts  
413-734-0943
- \_>) Lourdes (Gliceria) Jusino  
476 Dickinson Street  
Springfield, Massachusetts  
413-737-4794
- \_>) Mayda Martinez  
844 Carew Street  
Springfield, Massachusetts  
413-737-4794
- \_>) Elvira Molina  
86 Pelham Street  
Springfield, Massachusetts  
[telephone number will be provided as soon as verified]
- \_>) Juan Molina  
86 Pelham Street  
Springfield, Massachusetts  
[telephone number will be provided as soon as verified]
- \_>) Carmen Natal  
48 Barney Lane  
Springfield, Massachusetts  
413-736-8214
- \_>) Evaristo Perez  
18 Saab Ct.  
Springfield, Massachusetts  
413-737-6334
- \_>) Milagros "Terry" Rodriguez  
30 Sterling Street  
Springfield, Massachusetts  
413-747-0090 (w)
- \_>) Ruperta Rodriguez  
108 White Birch Drive  
Springfield, Massachusetts  
[telephone number will be provided as soon as verified]
- \_>) Reinaldo Sanchez  
124 Moreland Street  
Springfield, Massachusetts  
413-433-9006

\_ ) Gloria Sornoza  
356 Orange Street  
Springfield, Massachusetts  
413-733-3522

\_ ) Ramon Sornoza  
356 Orange Street  
Springfield, Massachusetts  
413-733-3522

\_ ) Marie Idali Torres  
75 Chapin Terrace  
Springfield, Massachusetts  
413-636-6207 (w)

### **B. Identification of Testimony to be Presented at Trial by Means of Deposition**

Defendants do not anticipate presenting testimony of a witness at trial by means of deposition taken during discovery in this instant challenge, unless a witness becomes unexpectedly and unavoidably unavailable. Defendants will be using deposition testimony, in whole or in part, as exhibits, to refresh a witnesses' memories, or for purposes of cross-examination. Where witnesses are available to testify, Defendants reserve the right to object to their testimony being introduced in lieu of trial testimony. Defendants further assert that they will be making counter-designations to excerpts or portions of deposition testimony that Plaintiffs offer as evidence or otherwise rely upon at trial. Defendants recognize that the Court has required that all direct testimony be submitted in the form of affidavit, but assert that such a requirement does not contemplate the submission of deposition testimony in lieu of affidavits reflecting a witnesses direct testimony.

### **C. Identification of Documents and Other Exhibits Pursuant to Fed. R. Civ. P. 26(a)(3)(C) and Local Rule 16.5(c)**

Defendants identify the following documents and other exhibits that may be offered at trial, but do not waive the right to object, in whole or in part, to the admissibility or relevance of any of these documents or any documents that Plaintiffs identify in their Pretrial Disclosures or to the qualifications of Plaintiffs' experts or the factual or legal basis for any expert opinion offered in the identified expert reports. Defendants reserve the right to supplement or amend this list i) as documents are made available in preparation of trial testimony; ii) in response or in rebuttal to any documents or witnesses identified by the Plaintiffs; iii) to clarify information provided in documents or exhibits identified by Plaintiffs; iv) in response to any additional documents identified by Plaintiffs; and v) as documents or exhibits are created or new information is compiled in preparation for trial. Where documents identified by Defendants have been made available or have become known to Defendants since November 17, 2006 Rule 26(a)(1) disclosure of documents and identification of persons with relevant knowledge and where such documents are not otherwise publicly available, they will be immediately forwarded to the Plaintiffs or will be made available to the Plaintiffs for inspection. Where

Plaintiffs have designated only a portion of a document, Defendants reserve the right to counter-designate portions of documents for completeness purposes or to clarify information provided by the partial document or exhibit or to support an argument or claim advanced by the Defendants.

- 1) Defendants will offer official elections returns (whole or in part; primary and/or general election) from the Springfield Office of the Election Commission for the following elections: a) 1959; b) 1963; c) 1977; d) 1987; e) 1991; f) 1993; g) 1995; h) 1997; i) 1999; j) 2000; k) 2001; l) 2002; m) 2003; n) 2004; o) 2005; p) 2006, if Plaintiffs do not agree to stipulate to the data so provided.
- 2) Defendants will offer Massachusetts Election Statistics, The Elections Division, Office of the Massachusetts Secretary of State, regarding certain legislative district contests and registered voters and turn-out, for the following years: 1980, 1982, 1984, 1986, 1988, 1990, 1992, 1994, 1996, and 1998, if Plaintiffs do not agree to stipulate to the data so provided.
- 3) Defendants will offer United States Census data for the City of Springfield for 1960, 1970, 1980, 1990, and 2000, if Plaintiffs do not agree to stipulate to the data so provided.
- 4) Defendants will offer 2000 Census Data – PL 94-171 – of Springfield precincts: Prepared by Massachusetts Voter Education Project, if Plaintiffs do not agree to stipulate to the data so provided.
- 5) Defendants will offer 1990 Census data for Springfield precincts, Election Data Services, Inc., provided by the Secretary of the Commonwealth, Elections Division
- 6) Defendants will offer Voting Behavior in Springfield, a Statistical and Analytical Report, September 1973, Springfield Urban League
- 7) Defendants will offer Voting Behavior in Springfield, a Statistical and Analytical Report, Second Edition, 1973-1982; Springfield Urban League
- 8) Defendants will offer Springfield and its Neighborhoods, Statistical Profile for Springfield, Massachusetts, Springfield Planning Department, March 2003
- 9) Defendants will offer Springfield and its Neighborhoods, Statistical Profile, Springfield Planning Department, May 1993
- 10) Defendants may offer pleadings, exhibits, federal observer reports, Spanish surname analysis of voter registration, orders, and transcripts in United States of America v. City of Springfield, C.A. No. 06-30123-MAP
- 11) Defendants will offer election related materials, instructions, notices, information, data, journals from 2006 election compiled by the Springfield Election Commission, the

Spanish Language Election Program Coordinator, attorneys (federal, state, and local) assigned to assist or who otherwise were involved in the conduct of the 2006 election

- 12) Defendants may offer the following information regarding Declarants for the United States in United States v. City of Springfield: a) records of voting histories of declarants compiled by Ms. Oyolo; and b) selected interview notes of declarants conducted by Ms. Oyolo after the November, 2006 election
- 13) Defendants may offer various notices, agendas, minutes of Spanish Language Advisory Committee meetings, including related newspaper articles
- 14) Defendants will offer various 1959 newspaper articles and “advertisements” from the Springfield daily newspapers concerning the “Plan A” government referendum obtained from the Connecticut Valley Historical Museum and newspaper research at the Springfield Public Library
- 15) Defendants may offer various 1960’s newspaper articles from the Springfield newspapers discussing efforts to provide for ward representation in the Plan A government and concerning the 1963 referendum election advocating for a 8-5 method of election for the City Council obtained from the Connecticut Valley Historical Museum and newspaper research at the Springfield Public Library
- 16) Defendants will offer the Expert Witness Report in Arise for Social Justice v. Springfield, of Dr. Stephan Thernstrom, May 24, 2006; Rejoinder to Rebuttal Reports of Douglas Amy and Richard Engstrom for Arise for Social Justice v. Springfield, October 30, 2006; curriculum vitae of Dr. Stephan Thernstrom; and selected excerpts from deposition of Dr. Thernstrom in addition to documents, books, articles, studies, and census data, cited, provided, and or relied upon by Dr. Thernstrom, including selected excerpts from Thernstrom, Stephan and Abigail Thernstrom, America in Black and White: One Nation, Indivisible (Simon and Schuster, 1997) and from Thernstrom, Abigail and Stephan Thernstrom, No Excuses: Closing the Racial Gap in Learning (Simon and Schuster, 2003)
- 17) Defendants will offer the Expert Report of Professor John Harmon (March 9, 2006), curriculum vitae, Exhibits A and B, and excerpts from deposition transcript of John E. Harmon, PhD (April 7, 2006)
- 18) Defendants may offer excerpts from deposition transcript of Douglas James Amy (April 21, 2006), including excerpts from documents (exhibits) used during deposition obtained from Dr. Amy’s website: <http://www.mtholyoke.edu/acad/polit/damy>
- 19) Defendants will offer Expert Report of Richard L. Engstrom, Ph.D.(March 8, 2006); Rebuttal Report of Richard L. Engstrom, Ph.D.(September 14, 2006); excerpts from deposition of Richard L. Engstrom, Ph.D. (April 19, 2006); curriculum vitae, and articles produced in response to the document request that accompanied the deposition subpoena, as well as several deposition exhibits

- 20) Defendants will offer pleadings, orders, and communications in Commonwealth of Massachusetts v. United States of America, C.A. No. 83-0945 (D.C.D.C.)(three judge court).
- 21) Defendants may offer one or more of the following from Community Development and Housing and Neighborhood Services: i) Consolidated Annual Performance & Evaluation Reports; ii) 3-5 Year Strategic Plan, iii) Annual Action Plans; iv) Consolidated Annual Performance and Evaluation Report; and v) any other reports, reports of hearings, and budgets generated by the Department of Community Development and Housing and Neighborhood Services, in addition to various documents provided to Plaintiffs or available on  
[http://www.springfieldcityhall.com/COS/Services/dept\\_housing.htm](http://www.springfieldcityhall.com/COS/Services/dept_housing.htm) or on  
<http://www.springfieldcode.org/> or  
[http://www.springfieldcityhall.com/COS/Services/dept\\_cd.htm](http://www.springfieldcityhall.com/COS/Services/dept_cd.htm) regarding services, programs, assistance, or funding provided by Community Development and Housing and Neighborhood Services
- 22) Defendants may offer selected handouts, advertisements, notices, and newspaper articles – some of which have been provided by the Plaintiffs -- regarding the 1997 referendum election proposing an 8-3 method of election and subsequent efforts to adopt and implement an 8-3 method of election
- 23) Defendant may offer selected documents, handouts, advertisements, notices, articles, sample ballots, campaign finance statements – some of which have been provided by the Plaintiffs -- regarding elections held subsequent to the 1997 referendum, voter turnout, efforts to increase minority voter registration and turnout, and minority political organizations and candidate support.
- 24) Defendants may offer one or more of the following from the Department of Health and Human Services: a) organizational chart for the Department of Health and Human Services; b) Department of Health Reorganization; c) Mission Statement; d) various budgets and grant reports; e) job descriptions for all of the professional, semi-professional positions, staffpersons, department heads, coordinators, and directors employed by or reporting to the Director of Health and Human Services; f) descriptions or reports of various programs, initiatives, committees, and task forces that address one or more of the health and safety related issues that the Department of Health and Human Services is committed to addressing, remedying, or alleviating; g) documents reporting on the status of various health related issues of primary concern to the Department of Health and Human Services, including, but not limited to, lack of prenatal care; low birthweight; incidence of teenage pregnancy; substance abuse; HIV/AIDS; infant mortality
- 25) Defendants may offer one or more of the following from or concerning the Police Department: a) A Management Study of the Springfield Police Department; b) recent inter-departmental memos providing strategies to reduce crime, disorder and fear, district

assignments; summer deployment; quality of life resolutions; c) statistical information regarding complaints received by the Police Department, as well as complaint procedures; e) documents analyzing race distribution of traffic stops; f) policies and procedures for the range of duties, responsibilities, and scope of authority of the Springfield Police; and g) recommendations, suggestions, and programs proposed by consultant to the Springfield Police Department regarding claims that there are racial disparities in the issuance of citations and the incidence of searches by Springfield Police.

- 26) Defendants may offer one or more of the following from or concerning the Springfield Public School Department, available at <http://www.sps.springfield.ma.us/generalInfo/index.asp> or previously disclosed to Plaintiffs or otherwise publicly available concerning a) reports of student performance on standardized tests; b) budgets and per/pupil expenditures; c) location of new school construction and renovation; d) various programs and curricula available to public school students; e) parent, student, teacher, and human resources; f) departments and organizations; g) priorities and goals; h) state and federal programs; i) district plans and policies; and j) research, assessment, and accountability
- 27) Defendants may offer documents, pleadings, exhibits, orders, reported opinions, reports and other proceedings in or related to challenges to the Springfield Public School System.
- 28) Defendants may offer documents, pleadings, orders, reported opinions, reports, and other proceedings in or related to challenges to Springfield's hiring practices for firefighters, subject to Massachusetts Civil Service, including but not limited to Quinn v. City of Boston, 325 F.3d 18 (1<sup>st</sup> Cir 2003); Boston Chapter, NAACP, Inc. v. Beecher, 371 F. Supp. 507 (D. Mass. 1974) aff'd 504 F. 2d 1017 (1<sup>st</sup> Cir. 1974), as well as any subsequent challenges to seniority lists for the Springfield Police Department, as it affected layoffs.
- 29) Defendants may offer excerpts from the House and Senate Reports regarding the 1982 Amendments to the Voting Rights Act
- 30) Defendants will offer various maps and redistricting plans created by MassGIS, Daniel Marrier, GIS Systems Analyst, and made available at his October 31, 2006 deposition or subsequent to his deposition including a) Plaintiffs' nine single-member district plans; b) Plaintiffs' six single-member district plans; c) various "two-plan overviews" comparing Plaintiffs' plans with neighborhood boundaries, ward boundaries, and precinct boundaries and comparing Plaintiffs' six and nine single-member district plans; d) identification of the precincts split by Plaintiffs' six and nine single-member district plans and number of ballots combination would be required if Plaintiffs' six and nine single-member district plans were implemented at "same time;" e) a nine single-member district plan that "minimizes" splitting precincts; f) various other "attempts: at alternative plans, including a 13 single-member district plan; g) demographic information regarding Plaintiffs' six and nine single-member district plan; h) various proposed plans

with location of the residence of incumbent and former members of the City Council and School Committee, named-Plaintiffs, and former candidates; and i) maps of Springfield showing distribution and concentrations of persons identified by the 2000 Census as non-Hispanic white, non-Hispanic African American, and Hispanic.

31) Defendants will offer Spanish surname analysis of turn-out for 1999, 2001, and 2003 elections, calculated by Plaintiffs and made available to Defendants in discovery

32) Defendants may offer one or more reports of research, analysis, investigations conducted or undertaken by the Research Bureau (Worcester) and available at <http://www.wrrb.org/index.php> regarding methods of election, forms of government, voting, and provision of municipal services.

33) Defendants will offer one or more of the charts, computations, comparison generated by Defendants and made available to the Plaintiffs comparing one or more of the following: Census data, votes received by candidates, registration data, turnout, Spanish surname analysis of registration and turnout, ecological regression calculations for precincts and wards in City of Springfield in i) all of the municipal elections for City Council and School Committee beginning in 1991 to the present; ii) all referendum elections proposing a change in the method of electing members to the City Council and/or the School Committee; iii) 1981 election; and iv) state and federal elections beginning in 1992. Many charts include calculations by precinct and ward of the proportion of a) turnout, b) blank ballots, c) support for a candidate, d) total vote received by a candidate; e) the total vote represented by precinct vote; and f) Spanish surnamed registered voters casting a ballot as well as g) the total number of voters who have Spanish surnames. Other charts merely compare the number of votes cast, turnout, and the placement of each candidate as among the candidates competing for election. Finally, several charts and accompanying analysis estimates the number of votes received by various candidates in the past four municipal elections using calculations of voter cohesion provided by Plaintiffs' expert, Dr. Engstrom and a reasonable estimation of minority turnout.

34) Defendants will offer the depositions of Bud L. Williams and Jose Tosado and excerpts of the deposition of Timothy Rooke.

35) Defendants may offer documents and reports from or generated by the Personnel Department for the City of Springfield related to its Affirmative Action Plan for Employment, hiring, promotions, and staffing, job descriptions, and any other required reports monthly or annual reports, as well as the Purchasing Department's "affirmative action" requirements related to the award of city contracts and the bidding process

36) Defendants may offer any additional documents identified by Plaintiffs or additional excerpts from documents where only a portion of the documents has been designated as an exhibit or offered as evidence or otherwise used at trial by Plaintiffs

Respectfully submitted,  
CITY OF SPRINGFIELD and  
SPRINGFIELD ELECTION  
COMMISSION

By \_\_\_\_\_  
Edward M. Pikula (BBO #399770)  
City Solicitor  
Deanne Bogan Ross (BBO #555407)  
City of Springfield  
Law Department  
36 Court Street, Room 210  
Springfield, Massachusetts 01103

Date: December 14, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served on the following  
counsel of record on the 14<sup>th</sup> day of December, 2006, by first-class mail and facsimile.

Nadine Cohen  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW  
OF THE BOSTON BAR ASSOCIATION  
294 Washington Street, Suite 443  
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